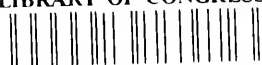


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LETTER

FROM THE
ACTING SECRETARY OF WAR,

TRANSMITTING

INFORMATION RELATIVE TO THE CLAIMS

OF

THE STATE OF MASSACHUSETTS

FOR

PAYMENT OF THE EXPENSES

OF

THE MILITIA,

ORDERED OUT BY THE EXECUTIVE AUTHORITY OF THE STATE,
DURING THE LATE WAR.

FEBRUARY 20, 1817.

Read, and ordered to lie upon the table.

WASHINGTON:

PRINTED BY E. DE KRAFFT

1818.

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*Department of War,
February 18th, 1817.*

SIR,

In obedience to the resolution of the House of Representatives of the 14th instant, directing the Secretary of War "to lay before the House any information in the possession of that Department relative to the claims of the state of Massachusetts, for payment of the expenses of the militia ordered out by the executive authority of the state, during the late war," I have the honor to transmit the enclosed documents. That marked A, is a copy of the communication, with the accompanying documents, made to this Department by James Lloyd, and William H. Sumner, esquires, agents on the part of the state of Massachusetts. B, is a copy of the answer given by this Department to that communication; and C, is a copy of a communication made by the Secretary of War to the chairman of the Military Committee of the Senate, on the 7th of February, 1815, with the accompanying documents.

I have the honor to be,

With great respect,

Your obedient servant,

GEO. GRAHAM,

Acting Secretary of War.

The honorable Henry Clay,

Speaker of the House of Representatives.



(A.)

SIR,

In the conferences we have had the honor to have with you, in relation to the claim of the state of Massachusetts, for expenses incurred, and supplies furnished, for the service of the militia of that state, for the general security and protection during the late war, with the adjustment of which claim we have been charged, it has been our wish, as we have before made known to you, to conduct the examination and settlement of the account with the respect and deference always due to the highest public functionaries of the nation, and to pursue that course, which, while it would do justice to the state we on this occasion have the honor to represent, would also best comport with the convenience and wishes of the executive of the United States, to whom, in the first instance, we considered it most proper to apply.

We understand, from the laws passed in the years 1795 and 1814, authorizing, under certain circumstances, detachments of the militia on the requisition of the President of the United States, that the expenses incurred in consequence of such requisitions, have been liquidated and paid by the general government; and that where the militia has been ordered by state authority into service, without the request of the President, and the occasion has, in the opinion of the executive of the United States, justified the call for their services, that a subsequent recognition has been considered as equal to a previous requisition; and that on this construction of the powers given, by the laws before mentioned, to the President, very large claims have been admitted and paid, in whole or in part, either by advances or on final adjustment, to several of the states who have presented them.

On this ground, therefore, and justly presuming on the distribution of that equal and exact justice to all the members of this great family of states, which alone could furnish the vital principle of their union, and which undoubtedly will govern the conduct of the general government on this and on all other occasions, we have hoped, that the account we had the honor to present would have been admitted, at least to an investigation on its merits; and that, as the simplest and most easy method of examination that presented itself, we should be allowed to take up the several items which composed it in succession, in the order in which they had been arranged, and to offer them for admission or rejection, accordingly as the judgment or sense of duty of the head of the Department, or the proper officer designated for the purpose, might determine: not expecting that a claim for any expense would be allowed, unless it were shown, that the occasion called for its being incurred—that the service was both effectively and economically rendered, and that it has been fully and honorably paid for by the state.

This course we regret extremely to find is not acceptable to the executive, if we were correctly impressed by the conversations which we had the honor to hold with you, the result of which, we understand to be, that the expenses not having been incurred under the authority of the United States, and the governor of Massachusetts having omitted to place the militia of the state under the officers of the general government, no account of this kind could be received for examination at the Department, without an antecedent recognition by the President of the United States of the several cases under which the expense arose.

We cannot but lament this course being now taken, because we do not learn that it has been asked in any other instance to be pursued so much in detail, as we now presume it to be required, in reference to the claim of Massachusetts; *because* it will unavoidably entail a considerable delay in classing anew the various expenses of the same bodies of militia, as they were at different times called into service, under separate heads or occasions; and may require a minuteness of evidence in support of the urgency of their being employed, which the notoriety of the occasions at the time they occurred, and the line of conduct understood to be adopted towards other claims, was not supposed to require; and which evidence is not, even now in all its parts, probably in existence as a matter of record, and must therefore, in many instances, still remain to be collected in an official or authentic shape, if this rigor in point of form should be adhered to.

It is undoubtedly true, and neither a wish is felt, nor a direction been received to conceal the fact, that a difference of opinion has unfortunately existed between the general government of the United States and the government of Massachusetts, respecting the constitutional powers in the former in relation to the control of the militia of the several states in the Union; and it is greatly to be deprecated that a difference in the construction of constitutional powers should ever excite other sentiments than those of a reciprocal respect, and a mutual disposition, after dispassionate consideration, to amend what may be defective, and to provide a remedy for the evils of the future, from the inconveniencies of the past; and, more especially should this be the case in a government founded on the choice of enlightened freemen, to secure the enjoyment of rational liberty to themselves and their posterity—and the chief preservation of the purity and consequent duration of which must spring from the jealous vigilance with which all questionable expansions of power ought to be viewed, either on the part of the general government, or that of the states—and which disposition, therefore, instead of meeting the frowns, would appear to be entitled to the support and encouragement of every friend of the present form of government, and who would wish to maintain and transmit it, resting on its existing foundations, pure and unimpaired to distant generations. And, in a more particular manner, should this disposition of mutual respect and deference for conflicting opinions prevail, where the event has happily proved the

evils apprehended to flow from them to be those of imagination, rather than of reality, and when the present prosperous circumstances of the country admit the people of the United States, the legitimate fountain of all power, peaceably to adopt that corrective which their ardent desire to secure and preserve their own rights, and those of the general and state governments, as defined by their respective constitution, will undoubtedly induce them to apply, should they consider the occasion as requiring it.

The point in discussion, that of the constitutional control of the militia, and the extent to which it has been given to the general government, or is retained by the states respectively, has, from the first adoption of the federal constitution, been perhaps a question more doubtful and interesting in its nature, and has given rise to a greater diversity of opinion among the most eminent statesmen of the country, and probably allows of a more honest difference of sentiment, than can be brought into controversy under any other provision of that constitution.

Without meaning to sustain or scarcely to enter into the argument, it is on the one hand conceded, that a denial of the *construction* given by the general government, would lessen the powers, and under certain circumstances, materially impair the strength of the nation, while on the other, the admission to the fullest extent, of the doctrines, that the executive of the Union is to be the only judge of the emergencies, under which the militia is to be brought into the service of the United States, at the time, and in the manner which it might think expedient; and that when so brought into service, the militia can, by the junction of a large number of their men, to a mere skeleton of regular troops, be in fact officered by the United States, and that the executives of the several states, contrary to their own belief in the existence of such emergencies, would be bound to bow before this tribunal, erected in the breast of a single individual, and to yield implicit obedience to such opinion, must, after the surrender of the several states of the principal sources of their revenue, place them entirely at the mercy or disposition of any future tenant of power; strip the individual states of their physical as well as fiscal force, and you would scarcely leave them in possession of even the remnant of that sovereignty and self-dependence which some of them undoubtedly supposed they had retained; but it is repeated, it is not intended to discuss this question, further than to prove, that with the most correct views, different sentiments may honestly and intelligibly exist, with regard to it; and that at any rate, the opinion adopted for the time by Massachusetts, was one fairly and deliberately formed by the governor of a large and respectable state, himself a statesman of forty years' experience in the highest offices in the country, and with the advice of his council; was corroborated by a judicial tribunal commanding the highest respect where known, and who are, by the constitution of the state, bound to give their opinion "upon important questions of law, and upon all occasions," to the executive, was an opinion.

confirmed by the legislature, and sanctioned by the people by their reiterated support and election to office of the same public agents who adopted and avowed it; an opinion, therefore, entitled to great respect under all circumstances, and meriting every consideration which the most deliberate judgment could give to it, and perhaps requiring the settlement of a point so interesting in itself, and so open to controversy, in the mode pointed out by the constitution, by an amendment explanatory of its powers, as applied to the rights of the general government, and the states, in the employment of the militia, in the cases contemplated by the constitution.

This course has already been recommended by the executive of a highly respectable state, (South Carolina,) not interested in the immediate question, to be adopted by its legislature, and seems to be that best founded in reason and expediency, and the one which might be attended with the happiest effects hereafter, in preventing misconstructions or collisions of opinion, when they might become injurious to the public safety, if the subject were left in its present unsettled state. At any rate, in a government yet in its infancy; in a government of experiment, which had never before tested or attempted to exercise its powers in a foreign war, and under a state of public sentiment unprecedented in former times, it cannot be wished or expected by any part of the community, that a difference of opinion relative to the extent of constitutional powers, sanctioned as was that formed by the state of Massachusetts, whether correct or erroneous in itself, can be suffered, after the services have been rendered, and the protection wanted in a great measure obtained, to remain as a lasting source of irritation, or to operate as a pecuniary mulct upon a brave and free people, *who* first reared the standard that ultimately, by the common efforts of the nation, waved triumphantly over the established independence of the country, and who in that war, as well as in the last, furnished their full proportion of those who filled its armies and fought its battles.

Still less, if possible, can it for a moment be believed, that a claim thus founded on a necessary and unavoidable defence for the general safety against a common enemy, and not amounting in the whole to one third of the sum which is contributed towards the revenues of the United States in a single year by a single port of the state that advanced it, can be retained as a lure for political subserviency, or its liquidation be withheld for the advancement of party purposes; a doctrine too discreditable to receive a moment's confidence, and requiring from the undersigned an apology for its introduction, only to be derived from the public avowal and recommendation that has been made of it, and the expression of their perfect conviction, it will meet, both from the high officers of government, and from the people of the United States, the reprobation it deserves.

We cannot, therefore, but feel confident that the rightful and constitutional remedy before noticed, if it should appear, in the good judgment of Congress, to be *advisable*, will be resorted to, and that the

claim of the state of Massachusetts will be admitted and repaid by the general government. Under the influence of these impressions, we beg leave to state, as the origin of this claim, and as matter of notoriety, that at the commencement of the war, the regular troops, perhaps not exceeding, at the time, a man to a mile of the exposed seacoast of Massachusetts, were, at a very early period, withdrawn to the northern frontier; that after the first year of the war, the maritime border of the state was frequently threatened by the enemy; that a part of it was actually invaded, and a very commanding naval and military position in it, unassailable when once fortified and possessed, without a superior naval force, except with great and nearly inevitable destruction, was secured and retained by the enemy; thus cutting off and keeping, in some degree, under his control, a large division of the state, depriving it of the power of military co-operation, or of a safe and easy intercourse with the capital or the government; that the harbors along the coast were frequently annoyed, expeditions for further conquest menaced, and preparations made for effecting it; that several ports in the state were entered, the vessels in them, in some instances, burnt: that small defenceless towns were laid under contribution: that predatory incursions and alarms constantly prevailed: and that the security and protection of the inhabitants of the state from further aggression and insult, were derived from the services of the militia, in the way in which they were rendered, and in which, from various circumstances, there is reason to believe, the defence of the state, by the militia, could alone have been made effectual.

The circumstances relative to the calls for the service of the militia having been communicated to Congress by the Department, and for the greater part printed, we will not trespass upon your time further, in relation to them, than to remark, that the first call was made in consequence of the letter of the honorable William Eustis, written prior to the declaration of war; and when that event still remained suspended in a very doubtful scale, and that none of the constitutional emergencies did, at the time, exist, or were expected by the government of Massachusetts speedily to occur, nor did they occur, to any extent of importance, until two years after the request of general Dearborn, on the 22d of June, under the authority given him on the 12th of that month. But shortly after the declaration of war, to wit, on the 3d of July, 1812, the executive of Massachusetts issued the general order, (No. 1,) which accompanies the present communication, for the purpose of placing the militia of the commonwealth in the most effective possible state, "exciting their love of country, and exhorting them to be obedient to the provisions and intentions of the laws in every respect, and to be ready, with alacrity and effect, to defend their constitutional rights and liberties," and apprising them, in case of invasion, or imminent danger thereof, they were to march without delay, and when in the actual service of the United States, to be placed under the orders of the President thereof. This order was sent, the same day it was issued, to general Dearborn, and,

shortly after this, a body of militia, consisting of three companies, was placed in the service of the United States, at Eastport, under the orders of general Boyd.

The next request received by the governor was in July, 1814, when the probability of attack having increased, the general requested eleven hundred men might be ordered out for the defence of the more exposed parts of the seacoast. This order was complied with, the troops placed under the authority of the United States, and the service performed; part of the said troops, to the number requested by general Dearborn, having been stationed at Castine and Machias, prior to the capture of those places by the enemy.

On the 5th September, 1814, general Dearborn again made a requisition on the governor of Massachusetts for a body of militia, when the general order (No. 2.) herewith presented was issued, on the 6th of the same month, and every measure taken to guard against the attacks of the enemy. A considerable body of the elite of the militia, from the interior, was ordered into immediate service, and marched and encamped on the seaboard, and the whole of the militia were enjoined to hold themselves in constant readiness, and were called upon "by every motive of love of country, of honor, and sympathy for their fellow citizens, who might be suffering the perils of war, to maintain the most perfect state of preparation, and to move, when called to the scene of action, with the utmost celerity." But the difficulties which had arisen, and the complaints that had been made, from placing the militia in the immediate service of the United States, under United States' officers, on former occasions had been such as to induce the belief it would be inexpedient, if not hazardous to repeat the order without having the power to enforce it. An arrangement was, however, subsequently made with general Dearborn, to place part of the militia in the forts of the United States, in the harbor of Boston, under the direction of his son, general H. S. Dearborn, and the very efficient body of troops before mentioned were stationed in the vicinity of the forts to reinforce and support them.

A fourth requisition was made by general Dearborn to guard the prisoners at Pittsfield, but the same causes operated as in the other case, in addition to the belief that in the midst of a thickly settled population the danger of escape from the existing guard, or of insurrection, did not require a compliance with the call; the event verified the soundness of the opinion.

These are all the calls for the militia which are known to have been made, and it is believed it can be shown that the omission to place the militia in the service of the United States was a matter of form rather than of fact; that the protection of the country was never for a moment abandoned, and that the militia were assembled and in readiness to act whenever emergencies appeared to require them; that the arrangements adopted were judicious and in several instances, predicated upon the wishes of the officers of the United

States, or of those who had the confidence of the general government, or who were at the time, or subsequently taken into its service, as will appear from the correspondence of generals Dearborn, King, and H. S. Dearborn, and of commodore Bainbridge and captain Hull of the navy, presented in the papers marked 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and also from the letter of the honorable Wm. Jones, late Secretary of the Navy.

It can be demonstrated, also, that the services of the militia, so rendered, were both frugal and effective, as large bodies of troops were never unnecessarily called into service, nor retained in it longer than the occasion required; that the constant appearance and probable knowledge of preparation and readiness to repel attack, prevented the advances or further depredation of the enemy; while the propriety of this mode of defence has been admitted, as we conceive, not only by the correspondence before referred to, and by the payments made under similar circumstances to other states, but also by the dictum of a former Secretary of War, promulgated at a period when, from the absence of all causes of irritation, the most dispassionate judgment could be formed, "that it is lawful for the governor of a state, when the state may be invaded, or in imminent danger of invasion, to be the judge of the degree and duration of the danger, and to apportion the defence to the exigencies that presented," as appears from the report of general Dearborn, made to the House of Representatives of the United States, February 3d, 1803; and also from the opinion of general Knox, when in the same office, as expressed in his letter of June 10th, 1793, to the governor of Georgia. And the utility and necessity of the said services of the militia, as they were rendered, is still more fully and strongly confirmed by the fact that, when so ordered into service, they received the recognition of general Dearborn, by the supplies of muskets and munitions of war he, in certain cases and to a considerable extent, furnished them with on loan, or otherwise, from the stores of the United States; and which had been requested of him expressly for the use of such bodies of militia ordered into service for the general defence of the seaboard.

The foregoing embraces the chief outline of the claim we have been instructed to present, and we proceed now, in compliance with the suggestion of the Department, to state that so far as we have at present at command the means of judging, it may be classed under the following heads, to wit:

1st. For the expenses of the militia who were called out by their respective officers, in consequence of an attack, or threat, to lay small towns and defenceless places under contribution; or who rallied suddenly against the depredatory incursions of the enemy's ships and barges, most of whom were in service only a few days at any one time, having been discharged as soon as the danger ceased; and for the pay and subsistence of small guards and detachments ordered

out at the suggestion of general Dearborn for the defence of several small villages, whose shipping and property were much exposed.

2d. For the payment and supplies of the militia who were detached and ordered into the service of the United States, from the time they were mustered in their several companies until they arrived at their places of rendezvous, and for the rations and supplies furnished them after they were received into the service of the United States, none having been provided for them at the time.

3d. For the pay and supplies of the militia marched for, and employed in the defence of the Penobscot frontier, after the country east of that river was taken possession of by the enemy.

4th. For the expense of the militia who were detached, agreeably to the request of the superintendent of the military district, and offered to be placed in the service of the United States, organized according to law, which offer was accepted but a short time before the period for which they were detached had expired; by reason of which, and the inability of the contractor on the station to furnish the supplies, they were retained in the service of the state.

5th. For the expense of the militia in Portland, which were called into service at the request of the committee of safety of that town, at a time when the enemy's fleet, with troops on board, was lying on the coast; when great alarm existed in the town, and an attack was momentarily expected; when the principal reliance for the defence of the town was on the militia; and when the seacoast must have been protected by them, or abandoned to the will of the enemy.

6th. For troops employed for the defence of *important* exposed places, some of which were attacked, and for the defence of which no troops were requested to be placed in the service of the United States.

7th. For troops which at the request of the committee of safety of various towns, in time of alarm, were marched in for the defence of those places, more than those which were placed, or offered to be placed in the service of the United States for the defence of such places, and who were immediately discharged on the cessation of danger.

8th. For troops that were called in for the defence of Boston, besides those placed in the *service of the United States*, and who were stationed in its vicinity to remain as garrisons of those forts in case of attack, and to prevent the enemy from obtaining possession of the heights adjoining, which commanded the forts, the town, and the United States' navy yard.

9th. For troops which, at the request of the several naval commanders at Boston and Portsmouth, and at the suggestion of general Dearborn, were called out for the protection of the United States' 24 gun ships building at those places, and for the defence of the ships of war of the United States which were chained to port; part of the evidence, in reference to which, may be seen in the letters of general

Dearborn, commodore Bainbridge, and captain Hull, and of adjutant general Brooks, who, in consequence of the directions of the executive, promptly complied with the requests made, ordered some of the most effective and valuable corps in the state into service, and informed the commodore that the governor was "fully disposed to do every thing in his power to aid in defending the navy yard and the ships in the harbor which his authority by the constitution would admit."

10th. For an allowance to the militia for arms and clothing, and the use of their horses when in service.

11th. For the cost of procuring small arms, which were distributed among the militia, of mounting and transporting pieces of heavy ordnance, purchasing ammunition, tents, military stores, and equipage. For barracks built and hired for the troops, and damage done to individuals in their property by erecting forts and occupying their buildings as barracks.

12th. For the expenses of materials furnished for building platforms, magazines, furnaces, pickets, &c. in forts and batteries erected in conformity with the advice and suggestions of naval and military commanders of the United States.

13th. For the pay and supplies of the militia who were employed in fatigue duty, in repairing, extending, and strengthening the United States' forts in various places, and for the costs of the materials therefor; and for shot and other supplies of ammunition furnished to the commanders of those forts.

14. For the pay and rations of the militia in the most exposed and important towns on the seaboard, who were called out two days in the week for discipline and exercise, agreeably to the wishes of the officers of the United States.

15th. For the purchase of several large ships, and preparing them to be sunk in the main channel of Boston harbor, in concurrence with the opinion of naval and military commanders in the service of the United States, for the security of the navigation, towns, and navy yard; which vessels were sold after the peace, and the proceeds credited to the United States.

The preceding specification offers to view, sir, the principal heads of charges incurred and paid by the state, for the general defence and security during the late war, which at present occur to us. But we will omit, at this time, to burden you with voluminous documents in their support, as we understand the judgment, with regard to them, is to rest on principles and not on details; and to be determined by the authority given to the existing laws of the United States, the usage under them, and the opinion of the executive. The vouchers in support of the claim shall be promptly furnished, as soon as we can ascertain what may be wanted and can procure them from Massachusetts; but as we came unprepared for the exhibit, under the form that has been prescribed, and are unwilling longer to delay this note for the receipt of further documents, we ask leave to be considered as reserving to the state, or its agents, the right hereafter to extend, al

ter or amend it, as a fuller development of the circumstances of the several items of the account, or the evidence in their support may require.

Under this illustration of the claim, we have now the honor to request you would be pleased to inform us whether the expenses which have arisen under the heads before enumerated, and which have been paid by the state, will be admitted to an examination at the War Department? And if the whole should not be so admitted, what part may be considered by the executive as entitled to payment, on the proof, hereafter to be produced, being satisfactorily established?

We will only extend the present letter by making known our readiness and desire to afford any further personal or other explanation on the subject to which it relates, whenever you may have the goodness to inform us it would be acceptable to you to receive it. And we also avail ourselves of the occasion to express the due sense we entertain of the urbanity and courtesy we have individually experienced, both from the State and War Departments, in the intercourse we have had with them on the business committed to our charge.

Requesting from you, sir, the favor of an answer as soon as the importance of the subject and your other various avocations will permit,

We have the honor to be,

With sentiments of great consideration,

Your respectful and obedient servants,

(Signed)

JAMES LLOYD,
WM. H. SUMNER,

Washington, February 3d, 1817.

*The honorable Geo. Graham,
Acting Secretary of War.*

(B.)

(Copy.)

*Department of War,
February 9th, 1817.***GENTLEMEN,**

Your communication of the 3d instant, in relation to the claim of the state of Massachusetts for the reimbursement of expenses incurred, and for supplies furnished for the service of its militia during the late war, has received the consideration due to it.

As it appears that, with one exception, the militia on whose account the expenses were incurred, were called out and kept in service by the state authorities, independently of the authority of the United States, and were withheld from the command of the officers of the United States, placed by the President within the military district of which Massachusetts formed a part, with authority to call for and take militia into the service of the United States; the claim with which you have been charged is excluded from the recognition of the Executive authority of the United States by the principles explained in the answer of the Secretary of War to the communication of the governor of Massachusetts, of the 7th of September, 1814, copies of which are herewith enclosed. Those principles have been kept in view by the Executive of the United States, in all cases where expenses incurred by a state on account of militia services have been assumed.

It follows from these observations, that no part of the claim presented by you in behalf of the state of Massachusetts, can be assumed by the Executive, except for such expenses as were incurred "for the payment and supplies of the militia who were detached and ordered into the service of the United States, from the time they were mustered in their several companies, until they arrived at their places of rendezvous, and for the rations and supplies furnished them after they were received into the service of the United States, none having been provided for them at the time."

I have the honor to be,

&c. &c. &c.

GEO. GRAHAM.

*Messrs. James Lloyd, and
Wm. H. Sumner.*



(C.)

Committee Chamber, January 7th, 1815.

SIR,

The committee of the Senate on military affairs, having observed that differences exist between the authorities of the United States and of some of the individual states, respecting the relative command of the officers of the regular army and of the militia, when called to act together in certain cases, has instructed me to ask for such information upon that subject as may be in the possession of your Department; and to inquire whether, in your judgment, some legislative provision might not be adopted, which would tend to heal such differences, to prevent the recurrence of others from the same cause, and to facilitate the operations of your Department in that respect.

Be pleased, sir, to accept the assurances of my high consideration, &c.

(Signed)

WM. B. GILES, *Chairman.*

Hon. James Monroe,
Secretary for the Department of State.

Department of War, February 11th, 1816.

SIR,

I have had the honor to receive your letter of the 7th ult. stating that the military committee of the Senate had observed that difficulties had arisen between the authorities of the United States and some of the individual states, respecting the relative command of the officers of the regular army and of the militia, when called to act together, and were desirous of such information on the subject as this Department might possess, and of its opinion, whether some legislative provisions might not be adopted which would tend to heal such differences, to prevent the recurrence of the like for the same causes, and to facilitate the operations of the Department in other respects?

My late indisposition will, I trust, explain satisfactorily to the committee the cause of the delay of my answer, which I have much regretted.

In complying with the request of the committee, it has appeared to me advisable to communicate all the documents in this Department relating to the objects of its inquiry. By a detailed view of the several measures which have been adopted by the President, since the war, for the defence of the country, in discharge of the duties imposed on him by the constitution and laws of the United States, of the objections to those measures by the executives of some of the states, and of the correspondence between this Department, and the military authorities acting under it, with the executives of such states, the committee will see the grounds of the differences which have attracted attention, and be enabled to judge how far any legislative interposition may be useful or proper.

The paper A, contains a copy of the letters of the Secretary of War to the governors of several states, detailing their respective quotas of militia under the acts of Congress.

B, is a copy of a report of the Secretary of War to the military committees of the Senate and House of Representatives, bearing date on the 21st day of December, 1812, communicating a division of the United States into military districts, then contemplated by the Department of War, with the reasons for it; which division, with certain modifications, was afterwards adopted. This report treats on some subjects not immediately within the scope of the call of the committee, yet treating in all its parts on the important subject of defence, and thereby intimately connected with the object of the call, I have thought that a view of the whole paper, at this time, would not be unacceptable.

C, is a copy of the answers of the governors of several of the states to the Department of War, on the requisitions made for parts

of their quotas of militia under the several acts of Congress, and of the correspondence which passed between them and the Department of War, and the commanders of the military districts acting under it, within which those states were.

D, is a copy of the correspondence between the governor of New Jersey and the Department of War, relating to the appointment of the governor of New York to the command of the military district, No. 3; a copy of this correspondence is presented to communicate to the committee every circumstance that has occurred relating to the command of the militia in the service of the United States.

It appears by these documents that the governors of Massachusetts, Connecticut, and Rhode Island, have objected to the requisitions made on their several states for parts of their respective quotas of militia, on the following grounds: 1st. That the President has no power to make requisition for any portion of militia, for either of the purposes specified by the constitution, unless the executive of the state, on whose militia such call is made, admits that the case alleged exists, and approves the call. 2d That when the militia of a state should be called into the service of the United States, no officer of the regular army has a right to command, or other person, not an officer of the militia, except the President of the United States in person. These being the only difficulties which have arisen between the Executive of the United States and the executives of any of the individual states, relative to the command of the militia, known to this Department, are, it is presumed, those respecting which the committee has asked information.

By these documents it is also shown that certain portions of the militia were called out by the executives of these states, and a part of them put into the service of the United States: these doctrines were, nevertheless, adhered to. I do not go into a detail on these points, deeming it unnecessary, as all the facts will be found in the documents.

Respecting as I do, and always have done, the rights of the individual states, and believing that the preservation of those rights in their full extent, according to a just construction of the principles of our constitution, is necessary to the existence of our Union, and of free government in these states, I take a deep interest in every question which involves such high considerations. I have no hesitation, however, in declaring it as my opinion, that the construction given to the constitution by the executives of these states is repugnant to its principles, and of dangerous tendency.

By the constitution, Congress has power to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states, respectively, the appointment of the officers, and the authority of

training the militia according to the discipline prescribed by Congress.

The President is likewise made commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States.

The power which is thus given to Congress by the people of the United States, to provide for calling forth the militia for purposes specified in the constitution, is unconditional. It is a complete power, vested in the national government, extending to all these purposes; if it was dependent on the assent of the executives of the individual states it might be frustrated. The character of the government would undergo an entire and radical change; the state executives might deny that the case had occurred which justified the call, and withhold the militia from the service of the general government.

It was obviously the intention of the framers of the constitution that these powers, vested in the general government, should be independent of the states' authorities, and adequate to the ends proposed. Terms more comprehensive than those which have been used, cannot well be conceived. Congress shall have power to provide for calling forth the militia to execute the laws of the Union. What laws? All laws which may be constitutionally made. Whatever laws are adopted for that purpose, within the just scope of that power, which do not violate the restraints provided in favor of the great fundamental principles of liberty, are constitutional, and ought to be obeyed. They have a right to provide for calling forth the militia to suppress insurrections. This right is also unqualified. It extends to every case of insurrection against the legitimate authority of the United States. It may be said that the government may abuse its authority, and force the people into an insurrection in defence of their rights. I do not think that this is a probable danger under our system; or that it is the mode of redress, even if such abuse should be practised, which a free people, jealous of their rights, ought to resort to. The right which they have to change their representatives in the legislative and executive branches of the government at short intervals, and thereby the whole system of measures, if they should think proper, is an ample security against the abuse, and a remedy for it if it should ever occur. Congress have also a right to provide for calling forth the militia to repel invasions. This right, by fair construction, is, in my judgment, an exemplification of the power over the militia, to enable the government to prosecute the war with effect, and not the limitation of it, by strict construction, to the special case of a descent of the enemy on any particular part of our territory. War exists, the enemy is powerful, his preparations are extensive, we may expect his attacks in many quarters. Shall we remain inactive spectators of the dangers which surround us, without making the arrangements suggested by an ordinary instinctive foresight, for our defence? A regular army, in sufficient extent, may not exist. The militia is the

principal resource. Is it possible that a free people would thus intentionally trammel a government which they had created for the purpose of sustaining them in their just rank, and in the enjoyment of all their rights as a nation, against the encroachments of other powers, more especially after they had experienced that reliance could not be placed on the states individually, and that without a general government thus endowed, their best interests would be sacrificed, and even their independence insecure? A necessary consequence of so complete and absolute a restraint on the power of the general government over the militia, would be to force the United States to resort to standing armies for all national purposes. A policy so fraught with mischief, and so absurd, ought not to be imputed to a free people in this enlightened age. It ought not, more especially, to be imputed to the good people of these states. Such a construction of the constitution is, in my opinion, repugnant to their highest interests, to the unequivocal intention of its framers, and to the just and obvious import of the instrument itself.

The construction given to the constitution by the executive is sanctioned by legislative authority, by the practice of the government, and by the assent and acquiescence of all the states, since the adoption of the constitution to the period of the late unhappy differences, respecting which the committee has desired to be informed. By the law of 1795, the President is authorized to call forth the militia for the purposes mentioned in the constitution, by a direct application to the militia officers, without any communication with, or reference to, the executives of the individual states; and penalties are prescribed for carrying the law into effect, should resort to them be necessary. It merits attention, in regard to the question under consideration, that the power given to the President to call forth the militia, is not made dependent by this law, on the fact of an invasion having actually occurred, but takes effect in case of imminent danger of it. In the year 1795, the President of the United States, on the certificate of a judge of the supreme court, that an insurrection existed in the western parts of Pennsylvania, called out the militia of several of the states, including the militia of Pennsylvania, to suppress it, which call was obeyed. In this instance the assent of the governor of Pennsylvania, to the existence of an insurrection, was not asked. General Washington, who then held the office of chief magistrate, relied exclusively on the powers of the general government for the purpose. The opinion of the same chief magistrate, of the power of the general government over the militia, was also made known by another distinguished act of his administration. By a report of general Knox, the then Secretary of War, to Congress, this doctrine is maintained to the utmost extent, and exemplifications of it insisted on, which prove, that from the nature of our population, the militia was the force which, in his judgment, ought principally to be relied on for all national purposes.

In the instances under consideration, powers are granted to Congress for specified purposes in distinct terms. A right to carry powers thus granted into effect, follows of course. The government to whom they are granted must judge of the means necessary for the purpose, subject to the checks provided by the system. It adopts a measure authorized, supervises its execution, and sees the impediments to it. It has a right to amend the law to carry the power into effect. If any doubt existed on this point, in any case on general principles, and I see cause for none, it cannot in the present, a power having been explicitly granted to Congress by the constitution, to pass all necessary and proper laws for carrying into execution the powers which are vested in the general government.

Equally unfounded, in my opinion, is the other objection of the executives of the states abovementioned, that when the militia of a state are called into the service of the United States, no officer of the regular army, or other person, not a militia officer, except the President of the United States, in person, has a right to command them.

When the militia are called into the service of the United States, all state authority over them ceases. They constitute a part of the national force, for the time, as essentially as do the troops of the regular army. Like the regular troops they are paid by the nation. Like them their operations are directed by the same government. The circumstance, that the officers of the militia are appointed by, and trained under, the authority of the state, individually, (which must, however, be done according to the discipline prescribed by Congress,) produces no effect on the great character of our political institutions, or on the character and duties of the militia, when called into the service of the United States.

That the President alone has a right to command the militia in person, when called into the service of the United States, and that no officer of the regular army can take the command in his absence, is a construction for which I can see nothing in the constitution to afford the slightest pretext. Is it inferred from the circumstance that he is appointed commander in chief of the militia when called into the service of the United States? The same clause appoints him commander in chief of the land and naval forces of the United States. In construction of law, he is commander in chief, though not present. His presence is not contemplated in either case. Equally necessary is it in the one as in the other. What has been the practice under the constitution, commencing with the first chief magistrate, and pursuing it, under his successors, to the present time? Has any President ever commanded, in person, either the land and naval forces, or the militia? Is it not known that the power to do it is vested in him principally for the purpose of giving him the control over military and naval operations, being a necessary attribute of the executive branch of the government? That though he might take the command of all the forces under it, no President has ever done it? That a provision

for the actual command is an object of legislative regulation, and the selection of the person to whom committed, of executive discretion?

Under the commander, all the officers of every species and corps, regular and militia, acting together, take rank with common consent and perfect harmony, according to an article of war, sanctioned by the constitution. By this article the officers of the regular army take rank of those of the militia of the same grade, without regard to the dates of their commissions; and officers of any and every grade of the militia take rank of all officers of inferior grade of the regular army. When these troops serve together, they constitute but one national force. They are governed by the same articles of war. The details for detachment, guard, or any other service, are made from them equally. They are, in truth, blended together as much as are the troops of the regular army when acting by themselves only.

The idea advanced by the honorable judges of Massachusetts, that where the regular troops and militia act together, and are commanded by the President in person, who withdraws, there can be no chief commander, of right, of either species of force, over the whole, but that the regulars and militia, as implied, may even be considered as allied forces, is a consequence of the construction for which they contend. It pushes the doctrine of state rights further than I have ever known it to be carried in any other instance. It is only in the case of powers who are completely independent of each other, and who maintain armies and prosecute war against a common enemy, for objects equally distinct and independent, that this doctrine can apply. It does not apply to the case of one independent power, who takes into its service the troops of another, for then the command is always at the disposal of the power making war, and employing such troops, whether regular or militia. How much less does it apply to the case under consideration, where there is but one power and one government, and the troops, whether regular or militia, though distinguished by shades of character, constitute but one people, and are, in fact, countrymen, friends and brethren!

The President is in himself no bond of union in that respect. He holds his station as commander in chief of the land and naval forces, and of the militia, under a constitution which binds us together as one people, for that and many other important purposes. His absence would not dissolve the bond. It would revive discordant, latent claims, or become a signal for disorganization.

The judicious selection of the chief commander, for any expedition or important station, is an object of high interest to the nation. Success often depends on it. The right to do this, appears to me, to have been explicitly vested in the President, by the authority given to Congress to provide for calling forth the militia, for organizing, arming, disciplining, and governing them, when employed in the service of the United States, and by the powers vested in him as chief executive of the United States. The rights of that highly respecta-

ble and virtuous body of our fellow citizens are, I am persuaded, completely secured, when the militia officers commanding corps are retained in their command—a major general over his division, a brigadier over his brigade, a colonel over his regiment, and the inferior officers in their respective stations. These rights are not injured or affected by the exercise of the right of the chief magistrate; a right incident to the executive power, equally applicable to every species of force, and of high importance to the public to appoint a commander over them of the regular army, when employed in the service of the United States, if he should deem it expedient. The rights of the militia officers, and those of the general government, are strictly compatible with each other. There is no collision between them. To displace militia officers for the employment of regulars, or to multiply commands of a separate character, especially of small bodies, for that purpose, would be improper. In dividing the United States into military districts, and placing a general of the regular army in command in each, with such portion of the regular force, artillery and infantry, as could be spared from other service, it was the object of the President to afford the best protection to every part of the Union that circumstances would admit of, with the least burden which might be possible to the people. These commanders were specially charged with the defence of their respective districts. It was enjoined on them to watch the movements of the enemy, to communicate to the government, and to execute its orders in summoning to the field, on menace of invasion, such portions of the quotas of the militia of each state, within their respective districts, as had been provided for by act of Congress, and detailed by this Department, as were thought necessary.

When this arrangement was entered into, it will be observed that there were no menace of immediate invasion, and few militia in the field. It was intended as a measure of precaution, to guard against possible, but, as was hoped and presumed, distant dangers. The executive then had no alternative between that arrangement and any other. The militia officers of rank afforded none, they were at home, for the executive has no power, under existing laws, to call them into the field, without a command of men suited to their rank; and even when thus called forth, their term of service must expire with that of the men whom they command. These facts show that nothing was more remote from the intentions of the government than to disregard the just claims of our fellow citizens of the militia. They show, also, how difficult it is to provide, by any arrangement which can be adopted, for a general and permanent defence of our cities and seaboard, without employing officers who are always in service, in the principal commands at least, for the purpose.

It is admitted that by the increased pressure of the war, in consequence of which much larger bodies of militia have been called into service, and with them many general officers of experience and

merit, these difficulties have proportionably diminished. Of these officers, several have been already advanced to distinguished commands with great satisfaction to their fellow-citizens, and advantage to their country. The committee may be assured that opportunities of this kind, regarding the obligation of a just responsibility, will be seized by the Executive with pleasure.

How far these differences may be healed, or the recurrence of the like in future be prevented by legislative provisions, the committee, on a full view of these documents, and on a due consideration of the whole subject, will be able to decide. It is proper, however, to remark, that the division of the country into military districts, so far as relates to that special object, requires no legislative sanction, if indeed it admits of one. The definition of boundary was intended for the purpose of prescribing a limit to the civil duties, if they may be so called, rather than the military, of the commander of each district; rather to the period preceding an invasion, with a view to the necessary preparatory measures for repelling it, than after it should take place. An invasion by a large force would probably require the concentration of all our troops along the seacoast, who might be brought to act in it; in such an event, all limitations of boundary to the several commanders would cease, the march of the enemy would regulate that of our armies, who would from every quarter be directed against them.

I have the honor to be, &c.

(Signed)

JAS. MONROE.

A.

Copy of a letter from William Eustis, Secretary of War, to the governors of states, dated War Department, April 5, 1812.

I am instructed by the President of the United to call upon the executives of the different states to take effectual measures to organize, arm, and equip, according to law, and hold in readiness to march at a moment's warning, their respective proportions of one hundred thousand militia, officers included, by virtue of an act of Congress, passed the 10th instant, entitled "An act to authorize a detachment from the militia of the United States."

This, therefore, is to require your excellency to take effectual measures for having ——— of the militia of ——— (being her

quota,) detached and duly organized in companies, battalions, regiments, brigades, and divisions, within the shortest periods that circumstances will permit, and as nearly as possible in the following proportions of artillery, cavalry, and infantry, viz: one twentieth part of artillery, one twentieth part of cavalry, and the residue infantry.

There will, however, be no objection on the part of the President of the United States, to the admission of a portion of riflemen, duly organized in the distinct corps, and not exceeding one tenth part of the whole quota of the states, respectively. Each corps should be properly armed and equipped for actual service.

When the detachment and organization shall have been effected, the respective corps will be exercised under the officers set over them, but will not remain embodied, or be considered as in actual service, until by subsequent orders they shall be directed to take the field.

Your excellency will please to direct that correct muster-rolls and inspection returns be made of the several corps, and that copies thereof be transmitted to this Department as early as possible.

Copy of a letter from William Eustis, esquire, Secretary of War, to the governor of Massachusetts, dated War Department, June 12, 1812.

SIR,

I am directed by the President to request your excellency to order into the service of the United States, on the requisition of major general Dearborn, such part of the quota of the militia of Massachusetts, detached conformably to the act of 10th April, 1812, as he may deem necessary for the defence of the seacoast.

Copy of a letter from William Eustis, Secretary of War, to his excellency Caleb Strong, governor of Massachusetts, dated July 21st, 1813.

SIR,

By information received from major general Dearborn, it appears that a detachment from the militia of Massachusetts, for the defence of the maritime frontier, required by him under the authority of the President, by virtue of the act of the 10th of April, 1812, have not been marched to the several stations assigned them.

Inasmuch as longer delay may be followed with distress to a certain portion of our fellow citizens, and with injurious consequences to our country, I am commanded by the President to inform your excellency that this arrangement of the militia was preparatory to the march of the regular troops to the northern frontier. The exigencies of the service have required, and orders have accordingly been given to major general Dearborn, to move the regular troops to that frontier, leaving a sufficient number to man the guns in the garrisons on the seaboard. The execution of this order increases, as your excellency cannot fail to observe, the necessity of hastening the detached militia to their several posts, as assigned by general Dearborn; in which case they will, of course, be considered in the actual service and pay of the United States.

The danger of invasion which existed at the time of issuing the order of the President, increases; and I am especially directed by the President to urge this consideration to your excellency, as requiring the necessary order to be given for the immediate march of the several detachments, specified by general Dearborn, to their respective posts.

I have the honor to be, &c. &c.



Circular letter from John Armstrong, Secretary of War, to the governors of the respective states, dated July 4, 1814.

SIR,

The late pacification in Europe offers to the enemy a large disposable force, both naval and military, and with it the means of giving to the war here a character of new and increased activity and extent.

Without knowing, with certainty, that such will be its application, and still less that any particular point or points will become objects of attack, the President has deemed it advisable, as a measure of precaution, to strengthen ourselves on the line of the Atlantic, and (as the principal means of doing this will be found in the militia) to invite the executives of certain states to organize and hold in readiness, for immediate service, a corps of ninety-three thousand five hundred men, under the laws of the 28th of February, 1795, and 18th of April, 1814.

The enclosed detail will show your excellency what, under this requisition, will be the quota of —————. As far as volunteer uniform companies can be found, they will be preferred.

The expediency of regarding (as well in the designating of the militia, as of their places of rendezvous) the points, the importance or exposure of which will be most likely to attract the views of the enemy, need but be suggested.

A report of the organization of your quota, when completed, and its place or places of rendezvous, will be acceptable.

I have the honor to be, &c.

C.

(Copy.)

Boston, August 5, 1812.

SIR,

I received your letter of the 21st July, when at Northampton, and the next day came to Boston. The people of this state appear to be under no apprehension of an invasion. Several towns, indeed, on the seacoast, soon after the declaration of war, applied to the governor and council for arms and ammunition, similar to the articles of that kind which had been delivered to them by the state in the course of the last war; and in some instances they were supplied accordingly. But they expressed no desire that any part of the militia should be called out for their defence; and in some cases we were assured such a measure would be disagreeable to them.

You observe in your last letter, that the danger of invasion, which existed at the time of issuing the orders of the President, increases. It would be difficult to infer from this expression, that in your opinion that danger is now very considerable, as the President's order must have been issued before war was declared, your former letter being dated the 12th of June, and general Dearborn's, who was then in Boston, on the 22d of that month; besides, it can hardly be supposed that if this state had been in great danger of invasion, the troops would have been called from hence to carry on offensive operations in a distant province; however, as it was understood that the governor of Nova Scotia had, by proclamations, forbid any incursions or depredations upon our territories, and as an opinion generally prevailed, that the governor had no authority to call the militia into actual service, unless one of the exigencies contemplated by the constitution exists, I thought it expedient to call the council together, and having laid before them your letter, and those I had received from general Dearborn, I requested their advice on the subject of them.

The council advised, "that they were unable, from a view of the constitution of the United States, and the letters aforesaid, to perceive that any exigency exists which can render it advisable to comply with the said requisition; but, as upon important questions of law, and upon solemn occasions, the governor and council have authority to require the opinion of the justices of the supreme judicial court, it is advisable to request the opinion of the supreme court upon the following questions, viz:

"1st. Whether the commanders in chief of the militia of the several states have a right to determine whether any of the exigencies contemplated by the constitution of the United States exist, so as to require them to place the militia, or any part of it, in the service of the United States, at the request of the President, to be commanded by him pursuant to acts of Congress?"

"2d. Whether, when either of the exigencies exist, authorizing the employing the militia in the service of the United States, the militia thus employed, can be lawfully commanded by any officer but of the militia, except by the President of the United States?"

I enclose a copy of the answers given by the judges to these questions.

Since the council were called, a person deputed by the towns of Eastport and Robinston, on our eastern boundary, at Passamaquoddy, applied to me, representing that they had no apprehensions of an invasion by an authorized British force; but that there were many lawless people on the borders, from whom they were in danger of predatory incursions; and requesting that they might be furnished with some arms and ammunition, and that three companies of militia might be called out for their protection. The council advised that they should be supplied with such arms and ammunition as were necessary for their present defence, which has been ordered. They also advised me to call into the service of the United States, three companies of the detached militia, for the purpose abovementioned. I have this day issued an order for calling out three companies of the detached militia, to be marched forthwith to Passamaquoddy, and to be commanded by a major; two of the companies will be stationed at Eastport, and one company at Robinston, until the President shall otherwise direct.

I have no intention officially to interfere in the measures of the general government, but if the President was fully acquainted with the situation of this state, I think he would have no wish to call our militia into service in the manner proposed by general Dearborn.

It is well known that the enemy will find it difficult to spare troops sufficient for the defence of their own territory, and predatory incursions are not likely to take place in this state, for at every point, except Passamaquoddy, which can present an object to those incursions, the people are too numerous to be attacked by such parties as generally engage in expeditions of that kind.

General Dearborn proposed that the detached militia should be stationed at only a few of the ports and places on the east; from the rest a part of their militia were to be called away; this circumstance would increase their danger: it would invite the aggressions of the enemy, and diminish their power of resistance.

The whole coast of Cape Cod is exposed as much as any part of the state to depredations; part of the militia must, according to this detailing order, be marched from their homes, and yet no place in the old colony of Plymouth is assigned to be the rendezvous of any of the detached militia. Every harbor or port within the state has a compact settlement, and generally the country around the harbor is populous. The places contemplated in general Dearborn's specifications, as the rendezvous of the detached militia, excepting in one or two instances, contain more of the militia than the portion of the militia assigned to them. The militia are well organized, and would, undoubtedly, prefer to defend their firesides, in company with their friend-, under their own officers, rather than be marched to some distant place, while strangers might be introduced to take their places at home.

In Boston the militia is well disciplined, and could be mustered in an hour, upon any signal of an approaching enemy; and in six hours the neighboring towns would pour in a greater force than an invading enemy will bring against it.

The same remark applies to Salem, Marblehead, and Newburyport, places whose harbors render an invasion next to impossible. In all of them there are, in addition to the common militia, independent corps of infantry and artillery, well disciplined and equipped, and ready, both in disposition and means, to repair to any place where invasion may be threatened, and able to repel it, except it should be made by a fleet of heavy ships, against which nothing, perhaps, would prove any defence until the enemy should land, when the entire militia would be prepared to meet them.

Kennebunk is unassailable by any thing but boats, which the numerous armed population is competent to resist. Portland has a militia and independent corps, sufficiently numerous for its defence; and the same is the case with Wiscasset and Castine.

Against predatory incursions, the militia of each place would be able to defend their property, and in a very short time they would be aided, if necessary, by the militia of the surrounding country. In case of a more serious invasion, whole brigades or divisions could be collected seasonably for defence. Indeed, considering the state of the militia in this commonwealth, I think there can be no doubt, that detaching a part of it, and distributing it into small portions, will tend to impair the defensive power.

I have thus freely expressed to you my own sentiments, and so far as I have heard, they are the sentiments of the best informed men. I am fully disposed to afford all the aid to the measures of the national government which the constitution requires of me, but, I per-

sume it will not be expected, or desired, that I shall fail in the duty which I owe to the people of this state, who have confided their interests to my care.

I am, sir, with respect,

Your most obedient and humble servant,

(Signed)

CALEB STRONG.

*The honorable William Eustis,
Secretary of War.*

To his excellency the governor, and the honorable the council of the commonwealth of Massachusetts: The undersigned, justices of the supreme judicial court, have considered the questions proposed by your excellency and honors for their opinion.

By the constitution of this state, the authority of commanding the militia of the commonwealth is vested exclusively in the governor, who has all the power incident to the office of commander-in-chief, and is to exercise them personally, or by subordinate officers under his command, agreeably to the rules and regulations of the constitution and the laws of the land.

While the governor of the commonwealth remained in the exercise of these powers, the federal constitution was ratified; by which was vested in the Congress a power to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, and to provide for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers.

The federal constitution further provides, that the President shall be commander in chief of the army of the United States, and of the militia of the several states, when called into the actual service of the United States.

On the construction of the federal and state constitutions must depend the answers to the several questions proposed. As the militia of the several states may be employed in the service of the United States for the three specific purposes of executing the laws of the Union, of suppressing insurrections, and of repelling invasions, the opinion of the judges is requested, whether the commanders in chief of the militia of the several states have a right to determine whether any of the exigencies aforesaid exist, so as to require them to place the militia, or any part of it, in the service of the United States, at

the request of the President, to be commanded by him pursuant to acts of Congress?

It is the opinion of the undersigned, that this right is vested in the commanders in chief of the militia of the several states.

The federal constitution provides, that whenever either of those exigencies exist, the militia may be employed pursuant to some act of Congress, in the service of the United States; but no power is given either to the President or to Congress to determine that either of the said exigencies do in fact exist. As this power is not delegated to the United States by the federal constitution, nor prohibited by it to the states, it is reserved to the states respectively; and from the nature of the power, it must be exercised by those with whom the states have respectively entrusted the chief command of the militia.

It is the duty of these commanders to execute this important trust, agreeably to the laws of their several states, respectively, without reference to the laws or officers of the United States, in all cases except those specially provided in the federal constitution. They must, therefore, determine whether either of the special cases exist, obliging them to relinquish the execution of this trust, and to render themselves and the militia subject to the command of the President. A different construction, giving to Congress the right to determine when these special cases exist, authorizing them to call forth the whole of the militia, and taking them from the commanders in chief of the several states, and subjecting them to the command of the President, would place all the militia, in effect, at the will of Congress, and produce a military consolidation of the states, without any constitutional remedy against the intentions of the people when ratifying the constitution. Indeed, since passing the act of Congress of February 25th, 1795, chapter 101, vesting in the President the power of calling forth the militia when the exigencies mentioned in the constitution shall exist, if the President has the power of determining when those exigencies exist, the militia in the several states is in effect at his command, and subject to his control.

No inconvenience can reasonably be presumed to result from the construction which vests in the commanders in chief of the militia, in the several states, the right of determining when the exigencies exist obliging them to place the militia in the service of the United States. These exigencies are of such a nature, that the existence of them can be easily ascertained by, or made known to, the commanders in chief of the militia; and when ascertained, the public interest will produce prompt obedience to the acts of Congress.

Another question proposed to the consideration of the judges, is, whether, when either of the exigencies exist authorizing the employing of the militia in the service of the United States, the militia thus employed can be lawfully commanded by any officer but of the militia, except by the President of the United States?

The federal constitution declares, that the President shall be commander in chief of the army of the United States. He may undoubtedly exercise this command by officers of the army of the United States, by him commissioned, according to law. The President is also declared to be the commander in chief of the militia of the several states, when called into the actual service of the United States. The officers of the militia are to be appointed by the states and the President may exercise his command of the militia by officers of the militia, duly appointed; but we know of no constitutional provision authorizing any officer of the army of the United States to command the militia, or authorizing any officer of the militia to command the army of the United States. The Congress may provide laws for the government of the militia when in actual service; but to extend this power to the placing them under the command of an officer not of the militia, except the President, would render nugatory the provision; that the militia are to have officers appointed by the states.

The union of the militia in the actual service of the United States, with troops of the United States, so far as to form one army, seems to be a case not provided for or contemplated in the constitution. It is, therefore, not within our department to determine on whom the command would devolve, on such an emergency, in the absence of the President. Whether one officer, either of the militia or of the army of the United States, to be settled according to military rank, should command the whole; whether the corps must be commanded by their respective officers, acting in concert as allied powers, or what other expedient should be adopted, are questions to be answered by others.

The undersigned regret that the distance of the other justices of the supreme judicial court, renders it impracticable to obtain their opinions seasonably upon the questions submitted.

(Signed)

THEOPHILUS PARSONS,
SAMUEL SEWALL,
ISAAC PARKER.

Extract of a letter from general Dearborn, to the Secretary of War, dated, Military District No. 1, Head Quarters, Boston, July 14th, 1814.

SIR,

From the exposed and unprotected situation of the military posts in this harbor, and the seaboard of this state generally, and the threats and daily depredations of the enemy, I have concluded it my duty to

exercise the authority vested in me by the President of the United States, by requesting the governor to order out a detachment of artillery and infantry.

A copy of my letter to governor Strong, and of his answer, are enclosed.

Copy of a letter from general Dearborn to his excellency Caleb Strong, governor of the state of Massachusetts, dated Military District No. 1, Head Quarters, Boston, July 8, 1814.

SIR,

The existing state of alarm on the seaboard of this commonwealth, arising from the daily depredations committed by the enemy on our coast, renders it desirable to afford some additional protection to the citizens generally on the seacoast, and especially to the principal towns and villages; and by virtue of authority derived from the President of the United States. I deem it my duty, at this time, to request that your excellency will be pleased to give the necessary orders for having detached, as early as circumstances will permit, armed and equipped as required by law, one major of artillery, two captains, eight lieutenants, thirteen sergeants, eleven corporals, six musicians, and two hundred privates; and one lieutenant colonel of infantry, two majors, ten captains, thirty subalterns, one adjutant, one quartermaster, one paymaster, one sergeant major, one quartermaster sergeant, two principal musicians, fifty sergeants, fifty corporals, twenty musicians, and nine hundred privates, to remain in the service of the United States for the term of three months, unless sooner discharged by order of the President of the United States. As it will be necessary to have the artillery and infantry placed at the different posts on the seaboard of this state, it would be desirable that, as far as practicable, they would be detached from the vicinity of the respective posts. The intended distribution of the detachment will be communicated to the adjutant general of the state, previous to his issuing the necessary orders. The proportion of officers, noncommissioned officers, musicians, and privates, is in conformity with the present regulations of the Department of War, from which I am not authorized to admit of any material deviation.

Copy of a letter from his excellency, Caleb Strong, governor of the state of Massachusetts, to general Dearborn, dated Northampton, July 12, 1814.

SIR,

This morning I received your letter of the 8th instant. As you propose to communicate to general Brooks your views, concerning the particular destination of the militia to be called out for the defence of the towns on the seacoast of this state, I have written to him on the subject.

Your suggestion that the men should be detached, as far as may be, from the vicinity of the respective posts, I think is perfectly proper, and I have no doubt you will be able to make such arrangements with general Brooks as will be satisfactory.

Extract of a letter from general Dearborn to the Secretary of War, dated Military District No. 1, Head Quarters, Boston, September 5, 1814.

SIR,

Having received such information as is entitled to full credit, that the enemy, with a formidable naval and land force, has arrived in Penobscot bay, and taken possession of Castine, and presuming his force, after forming a place of arms at Castine, will, with such reinforcements as he may receive from Halifax, in addition to the naval force now in Boston bay, attempt the destruction of the public ships and other public and private property on the seaboard. I have deemed it necessary to request the governor of this state and New Hampshire to order out, for the defence of Boston harbor, Portsmouth, Portland, and that part of the district of Maine between Kennebunk river and Penobscot, five thousand two hundred infantry, and five hundred and fifty artillery, for the term of three months, unless sooner discharged.

*Extract of a letter from H. Dearborn to the Secretary of War, dated
Head Quarters, District No. 1, Boston, October 15, 1814.*

SIR,

In obedience to the direction in your letter of the 27th ultimo, or the 2d instant I made a formal requisition on governor Strong for three hundred militia, to guard the prisoners at Pittsfield; and I enclosed to him a copy of your letter, for the purpose of showing him the necessity of his compliance. Having waited until yesterday morning without any answer from his excellency, I directed one of my aids to call on the Adjutant general of the state to ascertain whether he had received any order for making out the detachment for Pittsfield. The answer was, that no direction had been received from the governor to make such detachment.

*Copy of a letter from his excellency, Caleb Strong, governor of the
state of Massachusetts, to the Secretary of War, dated Boston,
September 7, 1814.*

The troops of the United States, which at different periods were stationed on the seacoast of this state, have been afterwards ordered to join the army on the western frontiers, so that very few have remained in the state. We have therefore found it necessary, in the course of the last and present year, to call out small bodies of the militia as guards to the towns most exposed. As the danger has increased, the number of detached militia has been augmented, and I have now issued the enclosed general order, for the protection of Boston, and the towns and property in its neighborhood, and shall immediately issue an order of a similar kind for the security of the district of Maine.

A few weeks since, agreeably to the request of general Dearborn, I detached seven hundred militia, for three months, for the defence of our seacoast, and placed them under his command, as superintendent of the military district; but such objections and inconveniences have arisen from that measure, that it cannot now be repeated. The militia called out on this occasion will be placed under the immediate command of the major general of militia.

I will thank you, sir, to consult with the President, and inform me whether the expenses thus necessarily incurred for our protection, will be ultimately reimbursed to this state by the general government; and I shall be particularly obliged if you will favor me with an answer as soon as may be, as the legislature of the state will meet on the fifth of the next month.

(Copy.)

GENERAL ORDERS.

Commonwealth of Massachusetts, Head Quarters, Boston, September 6, 1811.

The war between the United States and Great Britain having lately become more destructive, in consequence of violations of our territory, which continue to menace our cities and villages, the shipping in our harbors, and private property on shore, his excellency, the commander in chief, orders the whole of the militia to hold themselves in readiness to march at a moment's warning, with arms, ammunition, and accoutrements, as the laws of the United States, and of this state, require. Every man must likewise be provided with a good knapsack and blanket. Captains of companies must realize it to be one of their most solemn and imperious duties, to see the law respecting arms and equipments efficaciously executed; but the commander in chief relies on the concurring aid of all the general and field officers in encourageing the company officers in the discharge of their duty. The major generals, and commanding officers of divisions will give the necessary orders for an immediate inspection of their several regiments, by companies. Every instance of deficiency of arms or equipments should be forthwith supplied by the delinquent individual, or by the town to which he may belong, agreeably to the requirements of the militia law.

The officers commanding regiments, battalions, and companies of artillery, will pay special attention, at this interesting moment, to the state of their field pieces, their carriages and tumbrils; and see that every thing appertaining to them is in the most perfect order for marching, and for action, and particularly that suitable horses are always engaged, and ready at any moment to be attached to their pieces, that they may be moved to any point required with celerity. All the companies of artillery now to be called into immediate service, besides the requisite supplies of fixed and other ammunition, will be furnished by the quartermaster general with prolonges and bricoles.

The legislature of this state, always proud of its militia, has been particularly liberal in its artillery establishment; and the commander in chief promises himself that, emulating the brilliant example of Knox, and his heroic associates, in the artillery of the revolution, they will be equally distinguished for their discipline as soldiers, and for their gallantry in the field.

Under possible events, the cavalry of the several divisions may be in requisition. Every motive, therefore, of love of country, of honor and sympathy for their fellow citizens, who may be suffering the perils of war, will prompt them to maintain the most perfect state of preparation, and to move, when called to the scene of action, with all the rapidity of which cavalry is susceptible. The general officers, and the field officers of cavalry, as well as the company officers, will direct their attention to the quality of the horses, and suffer no man to be mounted but upon a horse sound and fit for actual service. A few bad horses may occasion irretrievable disaster.

The commander in chief having thus called the attention of all officers and soldiers of the militia to the observance of their several duties, at this eventful crisis, the more effectually to meet impending danger, orders that all the flank companies, whether of light infantry, grenadiers, or riflemen, of the 1st and 2d brigades of the 1st division; two companies, viz: the one at Andover, and the other at Havrehill, of the 2d division; all the companies of the 3d division, excepting the two companies in Charlestown; four companies of the 4th division; five companies of the 5th division; eight companies of the 7th division; and two companies of the 9th division, do immediately march to the town of Boston, unless (in the mean time,) otherwise directed. Each company will march to its place of destination by itself, without waiting for any other corps.

These companies, when assembled, will be arranged into regiments, or otherwise, as circumstances may dictate; and with the addition of twelve companies of artillery, will form the elite, or advance corps of the Massachusetts' militia. The field officers to command the regiments, and a general officer to command the whole, will hereafter be designated in general orders. The several companies of artillery to be annexed to the advance corps, will be furnished by the following divisions, viz: two companies from the 1st brigade, and one company from the 2d brigade of the 3d division; four companies from the 4th division; one company from the 5th division; and four companies from the 7th division.

Besides the above-mentioned companies, the commander in chief orders a detachment of sixteen companies of infantry to be immediately made from the 4th division, properly officered; and arranged into two regiments, which will march to Boston without the least unnecessary delay. Major general Mattoon is charged with the arrangement of the regiments. From the 9th division the commander in chief orders eight companies of infantry to be detached, properly officered, formed into a regiment, and marched to Boston. Major

generals Mattoon and Whiton will assign field officers for the troops, to be detached from their respective divisions; and the commander in chief relies on their experience and zeal to carry this order into the most prompt and energetic effect. As soon as the troops shall commence their march, each major general will give notice of it to the adjutant general.

All the troops must be well armed, accoutred, and equipped, and provided with ammunition, provisions, knapsacks, and blankets, as the law requires. The men will be supplied with rations when they arrive at the place of destination, and will receive pay from the time of their being embodied.

The security of the town and harbor of Boston being an object of primary importance, the commander in chief, while he wishes to direct the principal energies of the state to the attainment of this end, is solicitous to render the militia of Boston itself as efficient as possible. With this view he orders the infantry of the 3d brigade of the 1st division, commanded by brigadier general Welles, to be called out by regiments, in rotation, two days successively, for the^{ac} purpose of improving their discipline, already respectable, and of enabling them to practise the higher duties of the field.

This order is committed to brigadier general Welles, whose knowledge in tactics, and animated zeal in the service of his country, must ensure to his exertions the highest effect. The order will be continued in operation until revoked. The flank companies of this brigade will be reserved for other service.

The troops called into actual service by this order, will serve three months after they arrive at the ultimate rendezvous, unless sooner discharged.

By his excellency's command,

(Signed)

JOHN BROOKS,
Adjutant general.

Copy of a letter from James Monroe, Secretary of War, to his excellency, Caleb Strong, governor of Massachusetts, dated September 17, 1814.

SIR,

I have had the honor to receive your excellency's letter of the 7th instant. The attack of the enemy on Baltimore, and probable eventual attack on other places, with the heavy duties incident thereto pressing on this Department, have prevented my answering it at an earlier day.

It may be satisfactory to your excellency for me to explain the views and principles on which the government has acted, in regard to the defence of our eastern frontier.

It was anticipated, soon after the commencement of the war, that, while it lasted, every part of the Union, especially the seaboard, would be exposed to some degree of danger, greater or less, according to the spirit with which the war might be waged. It was the duty of the government to make the best provision against that danger which might be practicable, and it was proper that the provision should continue while the cause existed.

The arrangement of the United States into military districts, with a certain portion of the regular force, artillery and infantry, under an officer of the regular army, of experience and high rank, in each district, with power to call for the militia, as circumstances might require, was adopted with a view to afford the best protection to every part that circumstances would admit.

It was presumed that the establishment of a small force, of the kind stated, constituting the first elements of an army in each district, to be aided by the militia in case of an emergency, would be adequate to its defence. Such a force of infantry and artillery might repel small predatory parties, and form a rallying point for the militia at the more exposed and important stations, in case of more formidable invasion. A regular officer of experience, stationed in the district, acting under the authority, and pursuing the will of the government, might digest plans for its defence; select proper points for works, and superintend the erection of them; call for supplies of ordnance, for tents, and camp equipage; for small arms and other munitions of war; call for the militia, and dispose of the whole force. These duties, it was believed, could not be performed with equal advantage by the officers of the militia, who, being called into service for short terms, would not have it in their power, however well qualified they might be in other respects, to digest plans, and preserve that chain of connexion and system in the whole business, which seemed indispensable. On great consideration it was deemed the most eligible that could be adopted under the authority of the United States; indeed none other occurred that could be placed in competition with it. In this mode, the national government acts, by its proper organs, over whom it has control, and for whose engagements it is responsible.

The measures which may be adopted by a state government, for the defence of a state, must be considered as its own measures, and not those of the United States. The expenses attending them are chargeable to the state, and not to the United States.

Your excellency will perceive that a different construction would lead into the most important, and, as is believed, into the most pernicious consequences. If a state could call out the militia, and subject the United States to the expense of supporting them, at its pleasure, the national authority would cease, as to that important object, and

the nation be charged with expenses, in the measures producing which the national government had no agency, and over which it could have no control. This, however, though a serious objection to such a construction, is not the most weighty. By taking the defence of the state in its own hands, and out of those of the general government, a policy is introduced, on the tendency of which I forbear to comment. I shall remark, only, that if a close union of the states, and a harmonious co-operation between them and the the general government, are at any time necessary for the preservation of their independence, and of those inestimable liberties, which were achieved by the valor and blood of our ancestors, that period may be considered as having arrived.

It follows, from this view of the subject, that if the force which has been put into service by your excellency has been required by major general Dearborn, or received by him, and put under his command, that the expenses attending it will be defrayed by the United States. It follows, likewise, as a necessary consequence, that if this force has been called into service by the authority of the state, independently of major general Dearborn, and be not placed under him as commander of the district, that the state of Massachusetts is chargeable with the expense, and not the United States. Any claim which the state may have to reimbursement, must be judged of hereafter, by the competent authority, on a full view of all the circumstances attending it. It is a question which lies beyond the authority of the executive.

Your excellency will perceive that this government has no other alternative than to adhere to a system of defence which was adopted on great consideration, with the best view to the general welfare, or to abandon it, and with it a principle held sacred, thereby shrinking from its duty, at a moment of great peril, weakening the guards deemed necessary for the public safety, and opening the door to other consequences not less dangerous.

By these remarks it is not intended to convey the idea that a militia officer, of superior grade, regularly called into service, shall not command an officer of the regular army, of inferior grade, when acting together. No such idea is entertained by the government. The militia are relied on essentially for the defence of the country; in their hands every thing is safe. It is the object of the government to impose on them no burdens which it may be possible to avoid; and to protect them in the discharge of their duties, in the enjoyment of all their rights.

The various points which are attacked and menaced by the enemy, especially in this quarter, where they are waging, in considerable force, a predatory and desolating warfare, make it difficult to provide, immediately, for all the necessary expenditures. Any aid which the state of Massachusetts may afford to the United States, to meet those expenditures, will be cheerfully received, and applied to the payment

and support of the militia of that state, in the service of the United States.

It will be proper that the money thus advanced should be deposited in some bank in Boston, that the disbursement of it may be made under the authority of the government of the United States, as in similar cases elsewhere. Credit will be given to the state for such advances, and the amount be considered a loan to the United States.

I have the honor to be, &c.



(No. 1.)

Documents accompanying the communication from James Lloyd and Wm. H. Sumner, to the Secretary of War, dated 3d February, 1817.

GENERAL ORDERS.

Commonwealth of Massachusetts. Head Quarters, Boston, July 3d, 1812.

War having been declared by the government of the United States against Great Britain and Ireland, and the dependencies thereof, the commander in chief calls upon the militia of Massachusetts duly to notice the solemn and interesting crisis, and exhorts them to meet the occasion with constancy and firmness.

When war is commenced, no human foresight can discern the time of its termination or the course of events that must follow in its train. But the path of duty is the path of safety; Providence seldom abandons to ruin those who, to a just reliance on the superintending influence of heaven, add their own vigilant and strenuous exertions to preserve themselves. At the present moment, therefore, the commander in chief earnestly recommends to the officers, of every grade, a close and persevering attention to the duties resulting from their several stations; particularly that they acquire and maintain a perfect knowledge of the condition of their respective commands, and see, as far as is in their power, that their men are duly armed and equipped; that the time allotted to trainings be devoted to the instruction of noncommissioned officers and soldiers in the exercise of arms, and in the practise of evolution, as prescribed in the established regulations; and that the provisions and intentions of the laws being in

every respect fulfilled, they may be ready, with alacrity and effect, to defend their country, their constitutional rights, and those liberties which are not only our birthrights, but which, at the expense of so much blood and treasure, were purchased in the late revolution.

From the docility, from the good sense and patriotism of the noncommissioned officers and soldiers, the commander in chief is led to expect a patient submission to the instructions of their officers, prompt obedience to orders, and the practise of all those military and masculine virtues which adorn the soldier and exalt the man.

To all the militia, both officers and soldiers, the commander in chief would superadd an earnest exhortation, as they are citizens as well as soldiers, to cultivate a spirit of candor, of friendship, and mutual forbearance, and an ardent love of country, that shall elevate them above all sinister views, and eventually secure to them and their children, the blessings of peace, of liberty, and good government.

The commander in chief requires that particular attention be paid to the town magazines; that they are fully provided with ammunition, military stores and utensils, which the law directs; and the brigade quartermasters are required to perform their duty with promptitude and exactness.

In such divisions as have not completed the detachment of ten thousand men, called for by the general orders of the 25th day of April, last, the major generals, or commanding officers of those divisions, are enjoined to attend to that service without delay, and to make and complete the detachments from their respective corps, of their several quotas of the said ten thousand men, and to make return of the same as speedily as may be to the adjutant general: the said generals, and other officers, will take care that the militia so detached are duly provided with the efficient arms and accoutrements necessary for actual service. The militia detached by the orders above alluded to, after they are formed conformably to said orders, will hold themselves in readiness to march, on the shortest notice, pursuant to the orders to be given by the commander in chief, unless in case of actual invasion, or imminent danger thereof, in which case, without waiting for such orders, they will march without delay to the defence of any part or parts of this commonwealth that shall be so invaded, or in imminent danger of invasion; and when in the actual service of the United States, will be under the command of the President, agreeably to the constitution of the United States.

And whereas the quota of ten thousand militia required aforesaid, being to be raised from the several *divisions* and corps throughout the commonwealth, cannot be assembled in time to repel a sudden invasion, and to embody them previously, and keep them in constant service, would be extremely burdensome, and even if assembled would not be adequate to the defence of the numerous points of a coast of several hundred miles in extent; the commander in chief further orders and directs, that the generals and other officers of the whole

militia of the commonwealth, bearing in mind the possibility of a sudden invasion, hold themselves, and the corps of militia under their respective commands, in constant readiness to assemble and march to the defence of any part or parts of the commonwealth, pursuant to the orders to be given by him; but without waiting for such orders, in case of actual invasion, or such imminent danger thereof as will not admit of delay.

By the general orders abovementioned, of the 25th of April last, three major generals and six brigadier generals were assigned to command in that detachment, without being regularly detailed from the roster. The commander in chief, therefore, orders that the following general officers, being detailed from the roster as the law directs, be appointed to command in said detachment, in lieu of the general officers named in the general orders aforesaid, viz:

Western Division.

Major general Ebenezer Matoon,
Brigadier general Caleb Burbank,
Brigadier general Isaac Maltly.

Eastern Division.

Major general Henry Sewall,
Brigadier general John Blake,
Brigadier general David Payson.

Southern Division.

Major general Joseph B. Varnum,
Brigadier general Ebenezer Lathrop,
Brigadier general William Hildreth.

By order of the commander in chief.

WILLIAM DONNISON, *Adjutant General.*

(No. 2.)

GENERAL ORDERS.

Commonwealth of Massachusetts, Head Quarters, Boston, September 6, 1811.

The war between the United States and Great Britain having lately become more destructive, in consequence of violations of our territory, by the force of the enemy, which continue to menace our cities and villages, the shipping in our harbors, and private property on shore, his excellency, the commander in chief, orders the whole of the militia to hold themselves in readiness to march at a moment's warning, with arms, ammunition, and accoutrements, as the laws of the United States, and of this state, require. Every man must likewise be provided with a good knapsack and blanket. Captains of companies must realize it to be one of their most solemn and imperious duties, to see the law respecting arms and equipments efficaciously executed; but the commander in chief relies on the concurring aid of all the general and field officers in encouraging the company officers in the discharge of their duty. The major generals, and commanding officers of divisions will give the necessary orders for an immediate inspection of their several regiments, by companies. Every instance of deficiency of arms or equipments should be forthwith supplied by the delinquent individual, or by the town to which he may belong, agreeably to the requirements of the militia law.

The officers commanding regiments, battalions, and companies of artillery, will pay special attention, at this interesting moment, to the state of their field pieces, their carriages and trumbrils; and see that every thing appertaining to them is in the most perfect order for marching, and for action, and particularly that suitable horses are always engaged, and ready at any moment to be attached to their pieces, that they may be moved to any point required with celerity. All the companies of artillery now to be called into immediate service, besides the requisite supplies of fixed and other ammunition, will be furnished by the quartermaster general with prolonges and bricoles. The legislature of this state, always proud of its militia, has been particularly liberal in its artillery establishment; and the commander in chief promises himself that, emulating the brilliant example of Knox, and his heroic associates, in the artillery of the revolution, they will be equally distinguished for their discipline as soldiers, and for their gallantry in the field.

Under possible events, the cavalry of the several divisions may be in requisition. Every motive, therefore, of love of country, of honor and sympathy for their fellow citizens, who may be suffering the perils of war, will prompt them to maintain the most perfect state of preparation, and to move, when called to the scene of action, with all the rapidity of which cavalry is susceptible. The general officers, and the field officers of cavalry, as well as the company officers, will direct their attention to the quality of the horses, and suffer no man to be mounted but upon a horse sound and fit for actual service. A few bad horses may occasion irretrievable disaster.

The commander in chief having thus called the attention of all officers and soldiers of the militia to the observance of their several duties, at this eventful crisis, the more effectually to meet impending danger, orders that all the flank companies, whether of light infantry, grenadiers, or riflemen, of the 1st and 2d brigades of the 1st division; two companies, viz: the one at Andover, and the other at Havrehill, of the 2d division; all the companies of the 3d division, excepting the two companies in Charlestown; four companies of the 4th division; five companies of the 5th division; eight companies of the 7th division; and two companies of the 9th division, do immediately march to the town of Boston, unless (in the mean time,) otherwise directed. Each company will march to its place of destination by itself, without waiting for any other corps.

These companies, when assembled, will be arranged into regiments, or otherwise, as circumstances may dictate; and with the addition of twelve companies of artillery, will form the elite, or advance corps of the Massachusetts' militia. The field officers to command the regiments, and a general officer to command the whole, will hereafter be designated in general orders. The several companies of artillery to be annexed to the advance corps, will be furnished by the following divisions, viz: two companies from the 1st brigade, and one company from the 2d brigade of the 3d division; four companies from the 4th division; one company from the 5th division; and four companies from the 7th division.

Besides the abovementioned companies, the commander in chief orders a detachment of sixteen companies of infantry to be immediately made from the 4th division, properly officered, and arranged into two regiments, which will march to Boston without the least unnecessary delay. Major general Mattoon is charged with the arrangement of the regiments. From the 9th division the commander in chief orders eight companies of infantry to be detached, properly officered, formed into a regiment, and marched to Boston. Major generals Mattoon and Whiton will assign field officers for the troops, to be detached from their respective divisions; and the commander in chief relies on their experience and zeal to carry this order into the most prompt and energetic effect. As soon as the troops shall

commence their march, each major general will give notice of it to the adjutant general.

All the troops must be well armed, accoutred, and equipped, and provided with ammunition, provisions, knapsacks, and blankets, as the law requires. The men will be supplied with rations when they arrive at the place of destination, and will receive pay from the time of their being embodied.

The security of the town and harbor of Boston being an object of primary importance, the commander in chief, while he wishes to direct the principal energies of the state to the attainment of this end, is solicitous to render the militia of Boston itself as efficient as possible. With this view he orders the infantry of the 3d brigade of the 1st division, commanded by brigadier general Welles, to be called out by regiments, in rotation, two days successively, for the purpose of improving their discipline, already respectable, and of enabling them to practise the higher duties of the field.

This order is committed to brigadier general Welles, whose knowledge in tactics, and animated zeal in the service of his country, must ensure to his exertions the highest effect. The order will be continued in operation until revoked. The flank companies of this brigade will be reserved for other service.

The troops called into actual service by this order, will serve three months after they arrive at their ultimate rendezvous, unless sooner discharged.

By his excellency's command,

(Signed)

JOHN BROOKS,
Adjutant general.

(No. 3.)

(Copy.)

Navy yard, Charlestown, April 6th, 1814.

DEAR SIR,

Your politeness in consenting to receive signals from the navy yard under my command, merits my thanks, and may be of the highest importance to this useful establishment, in consequence of which I have the honor to enclose you the code of signals, and avail myself of this opportunity to express the gratification I received on Sunday last, in witnessing the ready disposition of the adjutant general of the

commonwealth, (general Brooks,) of yourself, and the military under your command, to afford aid in defence of the frigate *Constitution*, supposed in imminent danger.

The great activity displayed on that occasion, proves that an attack cannot be made by the enemy with impunity, even to the out-harbors of this part of the country.

I am, dear sir, very respectfully,

Your obedient servant,

WM. BAINBRIDGE.

The hon. General Welles, Boston.

(No. 4.)

(Copy.)

Navy yard, Charlestown, April 20, 1814,

DEAR SIR,

I have the pleasure to acknowledge the receipt of your's of the 19th instant, enclosing to me a transcript of a brigade order issued to the troops under your command; the arrangement therein made, and the assurances in your letter of the support of three thousand effective men, are truly gratifying to me, and claim my official acknowledgments, to which I beg leave to add my personal thanks for the very handsome manner in which you have attended to my requests, and to offer my best wishes for yourself and the troops under your command.

I have the honor to be,

With great esteem,

Your obedient servant,

WM. BAINBRIDGE.

Brigadier General Welles, Boston.

(No. 5.)

Extract of a letter from governor Strong to general Brooks, dated Boston, June 12th, 1814.

DEAR SIR,

I have this moment received your letter, enclosing one from commodore Bainbridge to you, and am fully disposed to do every thing in my power to aid his views, in defending the town and navy yard, and the ships in the harbor, so far as my authority, by the constitution, warrants; and in the present case I see no difficulty in complying with his or general Cushing's verbal request, which you stated to me yesterday, that a company of militia should be called out to guard the approach, by Chelsea, to the navy yard; and also, that in case of imminent danger of an attack, a requisite number of the militia be called to forts Independence and Warren, to be commanded by general Cushing, as he proposed, and to be discharged when the danger ceases.

(No. 6.)

Extract of a letter from adjutant general J. Brooks, to major general William King, dated Adjutant general's office, Boston, July 1, 1814.

SIR,

In relation to any posts occupied by the United States' troops as forts, I am instructed by the commander in chief to observe to you, that should application for aid, in case of danger from the approach of an enemy, be made to you by the officer commanding them, from an authority derived from the President of the United States, you forthwith furnish the number of men required.

It will not be expected, however, that an officer of the militia, of superior grade to the United States officer commanding at any such post, should be assigned to that service. The idea of two independent commands at one military station is absurd; among officers of the same grade, precedence to the national commission will be expected; but beyond this I presume the United States' government would never expect a concession.

(No. 7.)

*Extract of a letter from governor Strong to general Brooks, dated
Northampton, July 12, 1814.*

DEAR SIR,

I have just received the enclosed letter from general Dearborn, in which you will observe he requests that the necessary orders may be issued for detaching a number of the militia for the defence of the seacoast in this state. It appears to me that the danger which is now apprehended of invasion, will justify a call of this kind by the national government, and a compliance with it on my part.

General Dearborn proposes to communicate to you his views concerning the particular destination of the militia that may be detached. His suggestion that they should be taken, as far as may be, from the vicinity of the respective posts, I think is perfectly proper. The militia, in that case, will be less burdened, and will feel more responsibility; for young men, at a great distance from their homes, are apt to forget what is due to their own character, and the restraints of a moral kind which regulate their conduct.

As a number of the militia have been lately called out to defend the towns on the coast, perhaps the same men may be designated as a part of the force required by general Dearborn; or, if not, and others are provided to supply their places, those now in service may be dismissed. If you can make such arrangements with general Dearborn as were proposed by general Cushing, it will be satisfactory.

(No. 8.)

MILITARY DISTRICT, No. 1.

Head Quarters, Boston, August 12th, 1814.

SIR,

The citizens of the town of Duxbury and Cohasset are very desirous of having some small force stationed, for the defence of their respective villages and vessels, and it is probable that similar applica-

tions will be made from other places on the seacoast. If practicable, it would be very desirable to have such small detachments as may be required in such cases, turned out from the immediate vicinity of the several places respectively, without the formality of troubling his excellency, the governor, on every such occasion; will you be so obliging as to inform me whether an authority is, or probably may be vested in yourself, or in any committee, of which you are a member, for giving the necessary orders, for turning out such small detachments as I have alluded to, say of twenty-five or fifty men, for such places as it may be deemed necessary or expedient to afford such protection to? It is not easy to decide, at present, or probably at any one time, the precise number of places that it may be expedient to post such detachments at, or the number of men for each. The movements of the enemy, and his measures from time to time, must, in a considerable degree, determine what shall be proper or necessary to be done on our part; hence the convenience of having small detachments from the militia made, in the most prompt and convenient manner.

If neither yourself, nor any committee of which you are a member, now possess such authority as I have mentioned, would not his excellency the governor, probably, think it advisable to grant the necessary authority; any communications you may please to make, in reply to my observations, will confer a favor on

Your very humble servant,

H. DEARBORN.

*Major General John Brooks,
Adj. Gen. of the state of Massachusetts.*

(No. 9.)

Boston, September 6, 1814.

SIR,

Will you permit me to suggest to you the propriety of your proposing to his excellency, the expediency of having orders issued for placing the whole of the militia, within twenty or thirty miles of the sea shore, on the alert, and in perfect readiness for marching, on the shortest notice, and having suitable signals established for giving notice for turning out and being ready to march.

We ought not, under present circumstances, to neglect any practicable measures for adding to our means of defence.

I am, sir, your obedient humble servant,

H. DEARBORN.

Major General Brooks.

(No. 10.)

Extract of a letter from general Dearborn to captain Hull, dated Headquarters, Boston, September 14th, 1814.

I understand that the major generals of the militia have received orders from the governor to turn out any number of their respective divisions that they may deem necessary. I would, therefore, suggest to you the expediency of calling on major general Goodwin, of Berwick, for such a number of his division as you may deem necessary, by stating to him the imminent danger that the public and private property in that vicinity is in, if the enemy should effect a landing at York or Kittery, and requesting him to afford the aid you may propose, to be posted on or near the sea shore, near the most probable places for troops to land, and to throw up on the most suitable sites, some temporary breastworks. It is, at present, very inconvenient for me to leave this place.

(No. 11.)

Boston, October 1, 1814.

SIR,

In the month of May last, I held a conversation with brigadier general Cushing at that time the superintendent of Military District No. 1, on the subject of a detachment of militia being called out by your excellency, and placed under his command, for the defence of the sea-coast, and particularly of the towns and the forts in the harbor.

In this conversation he stated to me the incompetency of the United States' troops for manning even one of those fortresses; and expressed great solicitude to have such a number of men furnished him by the state, as to secure the forts under his care from surprise. The general at the same interview observed, that he was fully sensible of the feelings of the militia officers, in being placed under the command of United States' officers. But, to obviate that difficulty, as far as was in his power, he added, that in case of an attack or alarm, he should immediately repair to one of the forts himself, and that

the other fort should be committed to the defence of the militia; which should be subject to the command of no officer of the United States' army, but himself.

In another conversation with general Cushing, some little time afterwards, the same ideas were expressed.

With entire respect, I have the honor to be, sir, your excellency's most obedient servant,

J. BROOKS.

His excellency Caleb Strong.

No. 12.

Bath, June 27th, 1814.

SIR,

Your letters, under date the 23d instant, are now before me. No more of the militia have been retained in service, than is necessary to guard the various points and narrow passes on our rivers. When we were first alarmed, some of the companies were ordered into the forts, which were almost destitute of men, presuming they would be more useful there than in any other situation. But as I had no instruction that would authorize me to place them under the command of any officers of the United States, they were, therefore, when in these forts, under the command of their own officers. It is so manifestly improper, that in the same fort there should be officers acting independently of each other, that, unless it is the intention of the government of the United States immediately to place the necessary number of men in the forts at Georgetown, Edgcomb, and Damariscotta, the most acceptable service they can render the people on these rivers, is to withdraw what troops they have; as interested individuals, could do no more, voluntarily, than there is now done by the United States, and these *persons would act at least in concert with the militia*. There is now on these rivers more than forty thousand tons of shipping; the owners have commenced moving their vessels up the rivers; when this is effected, the number of militia out can be reduced. But the least number that now will satisfy the people, is one company for the various passes on the Kennebec, one on the Damariscotta, Bristol, and Boothbay, and one at Wiscasset and on the Sheepscut; to the latter place the force will be so much less than is expected, that in my order to general Payson, I shall permit him to exercise a discretion to let two companies remain, until I obtain an

answer to my letter of 24th instant, provided he should think it absolutely necessary.

As there is no other place where there is any number of vessels, so there is no other within my division, where I think there is much danger.

General Payson forwarded to me this day a letter from colonel Foote. Three companies on the first alarm were ordered out by colonel Foote, and discharged with the exception of forty-five men; I shall direct the discharge of twenty-five more, which I think will leave to that section of country about their proportion. That the people will complain generally, in this section of the country, that they have not the necessary number of men, I have no doubt; but as the alarms may be frequent, and of considerable continuance, it is better that there should not be too many on duty at the same time.

I have attended at all the places, within my division, where any considerable number of troops have been out, for the purpose of discharging as many as it would be prudent to discharge immediately; and in discharging as many as I have done, I have acted in opposition to the advice of all the magistrates, and generally a large proportion of my own officers.

I am sensible that the expense of defending our coast must be great; the property exposed is also great at the three places which I have named: the shipping alone, is worth more than a million of dollars.

I shall keep the commander in chief advised particularly of whatever occurs within the district of my command; also of the number of troops which may be employed. Should they, at any time, exceed the number required, or should they be too much reduced in the opinion of the commander in chief, I shall expect to be immediately advised.

I am, sir, very respectfully,

Your obedient servant,

WM. KING,

Major general 11th division,

The Honorable John Brooks,

Adjutant general, Boston.

No. 13.

Bath, July 8th, 1814.

SIR,

I acknowledge with great pleasure the receipt of your letter under date the 5th instant. To defend the people on the seaboard of my division from the depredations of the enemy, and to do this in a way that would be likely to meet the approbation of the commander in chief, has been my object; it is, therefore, with great satisfaction I received the information that the measures which I have pursued are approved of by his excellency.

The attacks of the enemy have been so rapid in succession at various points on the seaboard, as well as in the rivers, that almost in every instance the troops were, at first alarm, ordered out by the captains commanding companies, agreeably to the order of the commander in chief of July, 1812.

These troops having been discharged by my orders immediately on the enemy's retiring, and before the fears of the people had subsided, they have endeavored to get up an opinion that every officer acting under the general order of 1812, must be his own judge, not only as to turning out his men, but the time they should continue in service. This course would have relieved me from a great proportion of responsibility, the most unpleasant part of my duty, but the expense to the government would have so much increased, that I had not a moment's hesitancy in deciding in all the cases as they occurred. —a word from you on the subject will put an end to these doubts. Since my letter of the 4th, the *Tenedos* has left the harbor of Boothbay, and no other vessel appearing there to take her place, Reed's company has been discharged; Potter's company detached to do duty as guards on the *Sheepscut* and at Boothbay, has been ordered on that service, and the forty men which took the place of Potter's company on the *Sheepscut*, have been discharged.

The enemy having landed at Harpswell, and taken some stock from the inhabitants, I have ordered a guard from the company doing duty on this river, to that place.

There is now on duty three companies in addition to the twenty men, each from colonel Thatcher's and colonel Foote's regiments, considering the extent of coast to be guarded, and that it is indented with navigable bays and rivers, a less number, I think, could not be relied on to do the duty contemplated. As the measures now to be

adopted may be of some continuance, an opinion from the commander in chief on this occasion, will be very satisfactory to me.

I am, Sir, respectfully,

Your obedient servant,

WM. KING,

Major general 11th division.

Hon. John Brooks,

Adjutant general, Boston.

No. 14.

Belfast, September 8th, 1814.

SIR,

Since my letter of the 5th instant, I proceeded to Wiscasset, learning that the British were fortifying Belfast. I immediately ordered out colonel Cummings and Thatcher's regiments, and a battalion each from Day's and Cutter's regiments, to take up their line of march without delay, for this place. When I arrived at Warren on the 6th, I received information from Belfast, that the enemy were leaving that place, and had taken the west passage, on their way to Camden; colonel Foote's regiment was out—I ordered Thatcher's to that place, when I left them on the 7th in the morning, with orders for their discharge as soon as the vessels left Clam Cove, which were then there at anchor.

The vessels which left Belfast, with three others from Castine, passed Camden on the 6th at night, and early on the morning of the 7th, in all ten sail, in sight of the regiments of Thatcher and Foote. Believing that there would not be an attack made upon Camden, and as Cummings' regiment was within a few miles of Belfast, I ordered him to that place, where I met him on the afternoon of the 7th.

I also met at Belfast a regiment commanded by colonel Ulmer, who requested me, in the absence of the major general of the 10th division, and being also deprived of the services of the general of brigade, (Blake,) to direct the movements of his regiment, which I have consented to, until the pleasure of the commander in chief shall be made known to me. I shall recommend to the officers commanding regiments, within general Blake's brigade, a compliance with the

general orders of July, 1812; and shall endeavor to get such a force together as will prevent the enemy from taking down the Penobscot the vessels, all of which they consider as prizes of war.

I have sent an express to general Sewall, advising him of the situation of things on the Penobscot, and have named to him that two or three of his regiments, if immediately ordered to the Penobscot, to strike the river at Bangor, would be of great service at the present moment, particularly if commanded by him in person.

I am sensible of the very great responsibility which I take upon myself, in the first place in leaving the district of my local command, at a time when an attack may soon be expected; and, also, in consenting to organize and command troops with whom I am unacquainted, and who are very far from being well equipped.

As no effective movement can be made with the troops now under my command until the arrival of general Sewall, or a reinforcement from his division, I shall avail myself, probably in two or three days which may elapse, to visit Bath and Wiscasset, to put these places in the very best possible state of defence.

I have the honor to be, sir,

Very respectfully,

Your obedient servant,

WM. KING,

Major general 11th division.

*Honorable John Brooks,
Adjutant general, Boston.*

Fort Independence, Sept. 25, 1814.

SIR,

Your communication of the 23d, has been received and attentively perused. On this and Governor's Island, there are a sufficient number of men for manning all the works which are now erected or begun.

The defenceless positions on Governor's Island referred to, have been examined some time since, and works are planned for their defence, which I shall lay out on the morrow, and cause to be erected.

I shall be very glad to receive assistance from the *citizens* in labor, and should it be afforded, it is desirable that each man should bring a spade, shovel, pickaxe or wheelbarrow. If a party could be

sent, of one, two, or three hundred men on Tuesday, they can be employed to advantage, as it is highly important, that the batteries and such works as cover them should be finished as soon as possible. On this island, I have laid out, in advance of the southeast bastion, a battery for three mortars, which will be finished in three days. I have likewise laid out a work for the cover of the south battery on Governor's Island, which was commenced yesterday morning; a corner to the west water battery was commenced some days since, and is in great forwardness. I have received 1500 pikes, from the laboratory in Albany, which were sent to the two garrisons, by the order of major general Dearborn, for the defence of the curtains and bastions of the fort, and the parapet of the batteries. All the forts and batteries under my command, will, by the morrow, or next day, have an ample supply of ordnance stores of every kind.

If it could be effected, it is very desirable that the Boston and Charlestown seafencibles, should be stationed in the batteries to be erected on the east and north side of Governor's Island, every other week alternately, with their cannon and equipments. Two mortars will be placed on Governor's Island, and furnaces are, and will be erected for heating shot, sufficient to supply all the guns with hot shot, which can be brought to bear on ships at the same moment in all the works on the island.

I have directed, and have now making, a new kind of wad, for the curtains between Dearborn and Winthrop bastions, which are in rear of the water battery on Fort Independence, and for the hot shot, which will obviate the difficulties you have mentioned.

I have this day written commodore Bainbridge in relation to the position of the United States' ships, and expressed an opinion, that if the hulks are immediately sunk, and it shall be found the channel is sufficiently obstructed to prevent the near approach of the ships of the enemy, it is advisable to have the Independence and Constitution moored above them, to co-operate with the garrison.

I should like to have a consultation with the committee, who have in charge the sinking of the hulks, as to the site.

The signals which have been established to announce the approach of the enemy, are three guns, in the day time, from Fort Independence and Warren; and in the night, three guns from each fort, and a tar barrel lighted on the crown of the counter-scarp, opposite the west curtain of Fort Warren.

To discover the approach of the enemy, a guard boat is sent from this fort every night near the mouth of the harbor, with rockets as signals. I recommend that the troops which are to reinforce Fort Independence, and Warren, on the event of an alarm, be stationed on Dorchester Point, in the old work, which should be repaired. Boats, in sufficient number, should be stationed there for transporting the troops, which should be sent to the two islands in the following proportions, viz. two-thirds to Governor's Island, and the remainder to Fort Independence. There should be a large proportion of field artillery with case shot.

You may be assured that every thing in my power will be done to make a successful defence of the works which I have the honor to command. It gives me great pleasure to learn the determination of the executive, in relation to the absolute necessity of rendering these fortresses impregnable, and you may be assured, I shall be happy to co-operate with the military board in such arrangements as may be thought advisable for the protection of the capital of Massachusetts, and the preservation of the honor of our common country.

On the event of an alarm, major general Dearborn will assume the command of the two forts, and take the immediate command of one, and the other will be assigned to me.

I am, very respectfully,

Your obedient servant,

H. H. DEARBORN.

Th. H. Perkins, Esq.

(COPY.)

Navy Department,

April 27th, 1814.

SIR,

The proofs of zeal and alacrity to repel meditated attacks of the enemy, evinced by the correspondence enclosed in yours of the 20th*, are extremely gratifying, and ensure the safety of the flourishing town on that seaboard, and naval property, which the enemy is so desirous to destroy.

I am, very respectfully,

(Signed)

WM. JONES.

Commodore Bainbridge,

Commanding Naval Officer,

Charlestown, Massachusetts.

* The correspondence between gen. Welles, of Boston, and com. Bainbridge.



Handwritten text in a cursive script, likely a list or index, running vertically along the right edge of the page. The text is partially obscured by the binding and includes various characters and symbols.

WERT BOOKBINDING

JAN 1989

Grantville, PA

